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Supreme Court, U.S.
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NO. 91-1772

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1991

HASAN MUHAMMAD,

Petitioner,

vs.

JUNEAL PRATT,

Respondent.

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SUPREME COURT, U.S.

# BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

*Submitted by:*

*C. L. Robinson*
*Joseph A. Jordano*
*FITZGERALD, SCHORR, BARMETTLER & BRENNAN*
*1000 Woodmen Tower*
*Omaha, Nebraska*
*(402) 342-1000*
*Attorneys for Respondent.*

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## Question Presented for Review

May a witness who is found in civil contempt for willful disobedience of a court order be ordered to pay a monetary sanction in the form of attorney's fees when the underlying order upon which the contempt order was based is vacated?

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## Statement of the Case

Respondent generally agrees with information contained in petitioner's Statement of the Case. However important and crucial factual evidence adduced by the district court is conspicuously absent from the petitioner's description of the events giving rise to this action. In order to present a more complete record of the actions of Hasan Muhammad, respondent presents its Statement of the Case as follows.

Muhammad is a Deputy Public Counsel (Ombudsman) for the State of Nebraska. Juneal Pratt, an inmate at the Nebraska State Penitentiary in Lincoln, Nebraska, sued several employees of the state correctional system alleging violations of his civil rights, pursuant to 42 U.S.C. § 1983 (1988).

Pratt's court-appointed attorney, Joseph A. Jordano, served a subpoena duces tecum on Muhammad on February 29, 1991, directing him to appear for a deposition and to produce documents from the files of the Nebraska Public Counsel. Muhammad moved to quash the subpoena on March 7, 1991, arguing that disclosure of the requested information would violate a state statutory privilege (Neb. Rev. Stat. § 81-8,253 (1976)),[1] and that the subpoena was overly broad and unduly burdensome.

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[1] Section 81-8,253 provides that:

> [N]o proceeding, opinion, or expression of the Public Counsel shall be reviewable in any court. Neither the Public Counsel nor any member of his staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his official cognizance, except in a proceeding brought to enforce sections 81-8,240 to 81-8,254.

Neb. Rev. Stat. § 81,8,253 (Reissue 1987).

On March 20, 1991, Magistrate-Judge David L. Piester deferred ruling on Muhammad's motion to quash and directed him to make a showing regarding attempts to resolve the matter in accordance with Local Rule 20I, without the involvement of the court.[2] In that order, the Magistrate-Judge stated that the state law privilege relied on by Muhammad did not apply in this action. The court further directed that in the absence of Muhammad's showing that he tried to resolve the matter in accordance with Rule 20I, the motion to quash would be denied.

On March 28, 1991, Muhammad wrote a letter to Alfonza Whitaker, Assistant Attorney General of Nebraska, acknowledging receipt of the March 21 order of the Magistrate-Judge. In that letter, Muhammad stated: (1) the plaintiff's attorney should set up an appointment to meet Muhammad at his office in Lincoln if he had anything to discuss; and, (2) that he (Muhammad) would rely on the state statute in the matter.

On March 29, 1991, Thomas M. White, a partner at the firm representing Juneal Pratt, telephoned Muhammad in an attempt to clarify Muhammad's response to the March 21 order. Muhammad refused to talk with White, insisting that the Rule 20I

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[2] Local Rule 20I states that:

> To curtail undue delay in the administration of justice, this court shall refuse to consider any motion relating to discovery and production of documents under Rules 26 through 37 of the Federal Rules of Civil Procedure, unless moving counsel, as part of the motion, shall make a written showing that after personal consultation with counsel for opposing parties and sincere attempts to resolve differences they are unable to reach an accord. This showing shall recite, additionally, the date, time and place of such conference and the names of all persons participating in them.

Local Rule 20I (1991).

conference would only occur if Jordano would personally travel from his office in Omaha to Muhammad's office in Lincoln. On April 1, 1991, Jordano telephoned Muhammad to discuss the matter. During the brief phone call, Muhammad stated that he would not comply with the court order or the federal subpoena.

On April 5, 1991, plaintiff's counsel filed a motion for an order directing compliance with the subpoena, or in the alternative, for contempt sanctions. A copy of the motion was sent to Muhammad but he did not respond.

On May 9, 1991, the Magistrate-Judge issued an order directing Hasan Muhammad to comply with the federal subpoena and appear for a deposition in Lincoln, Nebraska. The May 9, 1991 order was never sent to Muhammad by the court.

On May 15, 1991, plaintiff's counsel wrote Muhammad a letter informing him about the May 9 order, including its contents. This letter was received by Muhammad, but he did not respond. After receiving no reply from the letter, Jordano telephoned Muhammad's office on May 28, 1991 and left a message for him. That phone call was never returned.

On June 4, 1991, Jordano then filed a motion for contempt and sanctions for Muhammad's failure to comply with the Magistrate's May 9 order. A copy of the motion was sent to Muhammad, which he admitted he received. Muhammad did not respond to this motion.

On July 1, 1991, the Magistrate-Judge granted the plaintiff's June 4 motion and issued a show cause order directing

Muhammad to appear before the district court on July 25, 1991, to show cause why he should not be held in contempt of the May 9 order. Muhammad received this order on July 15, 1991. On July 17, 1991, he contacted the Nebraska Attorney General to request legal assistance. Laurie Smith Camp of the Attorney General's office was assigned to represent Muhammad in the contempt proceeding.

Ms. Smith Camp filed a motion for relief of the May 9 order and for the entry of a protective order. The court held an evidentiary hearing on July 25, 1991 during which Muhammad presented evidence and was afforded the opportunity to cross-examine the plaintiff's witnesses.

Muhammad argued that because he had not seen the actual May 9, 1991 order directing him to comply with the subpoena, he should not be held in contempt. He also testified under oath that he would not comply with any order by the federal court directing him to comply with the federal subpoena, ". . . unless Section 81-8,253 is declared unconstitutional by the Supreme court of the State of Nebraska or . . . by the U.S. District Court Judge."

The district court found Muhammad's argument unavailing and concluded that he knew about the contents of the May 9, 1991 order, but made no attempt to comply with its terms. On September 4, 1991, the court issued an order holding Muhammad in contempt of the Magistrate-Judge's May 9 order. He ordered him

to pay plaintiff's counsel a determinate monetary sanction in the amount of $774.00.

The court also relieved Muhammad from his obligation to comply with the May 9, 1991 order until the Magistrate could conduct a more careful analysis of the circumstances that might justify or abrogate recognizing the state law privilege. The case was accordingly remanded back to the Magistrate-Judge on the issue of whether the subpoena should be quashed. The court set the case back to the point in time after Muhammad had filed the motion to quash and the magistrate had ordered him to comply with Local Rule 20I.

Hasan Muhammad appealed the district court order of September 6, 1991 to the Eighth Circuit Court of Appeals. On March 26, 1991, the Eighth Circuit affirmed the district court and held that the district court had properly used its inherent powers to vindicate its authority by sanctioning Hasan Muhammad for his willful disregard of the judicial process.

## Reasons for Denying the Writ

**A. THERE IS NO IMPORTANT CONSTITUTIONAL ISSUE OR INTERJURISDICTIONAL DISPUTE AMONG THE CIRCUITS THAT WOULD JUSTIFY THE GRANTING OF A WRIT OF CERTIORARI.**

The petitioner's argument that the civil contempt order cannot stand because the underlying order was vacated wholly ignores the detailed factual record revealing the reasons for the sanction imposed upon the petitioner by the district court. The underlying order of May 9, 1991 upon which the petitioner focuses was the culminating event in a pattern of obstinacy by Hasan Muhammad towards the federal court. The petitioner was sanctioned for more than his willful disregard of a single court order. Relying on its inherent power to sanction bad faith conduct, the district court sought to vindicate its authority and punish the petitioner for refusing to submit to the court's authority to resolve the discovery dispute relating to the federal subpoena.

In *Chambers v. NASCO, Inc.*, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991), this court noted that when a court invokes its inherent power the appropriate standard of review is for abuse of discretion. Accord, *Link v. Wabash RR Co.*, 370 U.S. 626, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962).

Nothing in the petitioner's brief suggests a paramount constitutional issue or interjurisdictional dispute among the circuit courts sufficient to justify the court granting a Writ of

Certiorari. The Eighth Circuit's decision to affirm the sanctions against Hasan Muhammad was based directly upon its analysis of the chronology of events giving rise to the contempt proceeding and the court order. This factually based decision cannot be said to conflict with other circuits and state court decisions. Thus, this appeal reflects only the petitioner's dissatisfaction with the application of a discretionary standard used to determine when sanctions should be imposed.

After reviewing the factual record, the Eighth Circuit stated that no abuse of discretion occurred. A review of that abuse of discretion standard would serve no purpose beyond the confines of this case. Such a review is not worthy of this court's attention, and the Writ should therefore be denied.

**B. THE DISTRICT COURT PROPERLY USED ITS INHERENT POWERS TO PUNISH THE PETITIONER'S WILLFUL REPUDIATION AND OPEN DEFIANCE OF THE COURT'S AUTHORITY.**

This court has long recognized that federal district courts possess inherent powers to sanction improper conduct. *Ex Parte Robinson*, 86 U.S. 505 (19 Wall. 1874). *Chambers v. NASCO, Inc.* 111 S. Ct. 2123, 2132-33 (1991). The inherent powers of the court are those "governed not by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the expeditious disposition of cases." *Link v.*

*Wabash R. Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 1388-89, 8 L. Ed. 2d 734 (1962).

Relying on the case of *United States v. United Mine Workers of Am.*, 330 U.S. 258 (1947), the petitioner argues that he cannot be held in civil contempt and ordered to pay sanctions when the underlying order is vacated. Not only does this argument run counter to the broad holding in *Chambers*, but carried to its logical result, a district court would be prohibited from accomplishing the dual objectives of vacating or modifying a court order while at the same time punishing a recalcitrant witness who willfully disobeys the authority of the federal judiciary.

In *Chambers,* this court reaffirmed the broad reach of the district court's inherent powers to sanction those who "abuse the judicial process" and those who exhibit "bad faith conduct" towards the court. 111 S. Ct. at 2132-33. Appropriately, a district court's inherent powers to punish improper conduct by a witness is not limited to facts evidencing that a fraud was perpetrated upon the court. Bad faith conduct comes in many forms. A witness who willfully disobeys a court order as part of a plan to repudiate the court's authority can be said to have engaged in bad faith or vexatious conduct. Sanctioning such a witness does not depend on the validity of the underlying order if the purpose of the sanction is to vindicate the court's authority by punishing willful disobedience. 111 S. Ct. at 2133.

The record adduced by the trial court supports the Eighth Circuit's conclusion that the petitioner in the present case was sanctioned for engaging in a pattern of willful indifference to the authority of the federal court. Upon reviewing the district court record from the petitioner's contempt hearing and the memorandum opinion, the Eighth Circuit concluded that the purpose of the sanction was to vindicate the authority of the court. This point was stated by the appeals court in the following passage of its opinion.

> Although the court used reasonable attorney's fees as the measure of monetary sanctions, it is clear from the court's opinion that the sanction was **intended to vindicate the authority of the court.** *See e.g., id.* at 2137 (stating that an award of attorney fees serves the same purpose as a fine imposed for civil contempt because it vindicates a court's authority over a recalcitrant individual). Thus, we find "that the district court acted within its discretion in assessing [attorney's fees] as a sanction for [Muhammad's] ...conduct. *Id.* at 2138.
>
> Muhammad asserts that he was not provided proper notice and further asserts that there was no showing that his actions were willful. We reject both contentions. Muhammad admittedly received copies of a motion for contempt and sanctions, and an order to appear and show cause why he should not be held in contempt for failure to comply with the earlier order of the court. A hearing was held at which Muhammad testified. **With respect to willfulness, Muhammad testified at the hearing that he had no intention of complying with the court's order.**

As stated earlier in this brief, the district court adduced evidence showing that the petitioner, Hasan Muhammad, never intended to abide by the federal court order directing him to comply with the federal subpoena served upon him. Towards this end the petitioner, himself an attorney, actively refused all

court directives aimed at resolving the matter. His obstinacy ultimately required a contempt hearing, at which he testified that would not comply with any court order, past or future, directing him to produce his records. Based on the record, the Court of Appeals decision affirming the district court's contempt order was proper.

**C. AN ORDER OF CIVIL CONTEMPT MAY INCLUDE AN AWARD OF ATTORNEY FEES SERVING THE SAME PURPOSE AS A REMEDIAL FINE.**

The petitioner also argues that the award of attorney's fees should be reviewed because a sanction for civil contempt should not include an award of attorney's fees. However, this court held differently in the 1978 case of *Hutto v. Finney*, 437 U.S. 678 (1978). In that case, the court stated that,

> "[T]he award of attorney's fees for bad faith serve[s] the same purpose as a remedial fine imposed for civil contempt," because "[i]t vindicate[s] the district court's authority over a recalcitrant litigant."

*Hutto*, 437 U.S., at 691, 98 S. Ct., at 2574. See *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399 (1923). In light of a detailed record of the petitioner's actions and attitude towards the court, the Eighth Circuit decision that the sanctions were intended to vindicate the authority of the judicial system should not be reviewed. This issue is not deserving of consideration by this court. The Writ of Certiorari should not be granted.

## Conclusion

There is nothing in the petitioner's brief suggesting a paramount federal issue requiring a review by this court. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

By _____

C. L. Robinson
Joseph A. Jordano
For FITZGERALD, SCHORR, BARMETTLER & BRENNAN
1000 Woodmen Tower
Omaha, NE 68102
(402) 342-1000

ATTORNEYS FOR RESPONDENT

## CERTIFICATE OF SERVICE

I hereby certify that twelve true and correct copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari were sent on this 5th day of June, 1992, via Federal Express to the Supreme Court of the United States and two copies were mailed via U.S. mail, postage prepaid, to all attorneys of record as follows:

Alfonza Whitaker
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509-8920

Laurie Smith Camp
Attorney General's Office
2115 State Capitol
Lincoln, NE 68509-8920

_____
Joseph A. Jordano

LAW OFFICES
FITZGERALD, SCHORR, BARMETTLER & BRENNAN
1000 WOODMEN TOWER
OMAHA, NEBRASKA 68102
(402) 342-1000

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1991

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| HASAN MUHAMMAD, | ) | NO. 91-1772 |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| vs. | ) | NOTICE OF SERVICE |
| | ) | |
| JUNEAL D. PRATT, | ) | |
| | ) | |
| Respondent. | ) | |

Notice is hereby given that a true and correct copy of the respondent's brief in opposition to petition for writ of certiorari was served upon the petitioners, by and through their attorney of record, Laurie Smith Camp, Assistant Attorney General, P.O. Box 98920, Lincoln, Nebraska 68509-8920, by United States mail, sufficient first-class postage perpaid, this 5th day of June, 1992.

JUNEAL D. PRATT, Respondent,

By C. L. Robinson

C. L. Robinson and
Joseph A. Jordano
For FITZGERALD, SCHORR,
BARMETTLER & BRENNAN
1000 Woodmen Tower
Omaha, Nebraska 68102
(402) 342-1000